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**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-314**

**DORSIE L. TERRILL**

**APPELLANT**

**VS.**

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

**TRANSPORTATION CABINET  
MIKE HANCOCK, APPOINTING AUTHORITY**

**APPELLEE**

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This matter came on for a pre-hearing conference on January 26, 2015, at 10:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Dorsie L. Terrill, was not present, but was represented by the Hon. Paul Fauri. The Appellee, Transportation Cabinet, was present and represented by the Hon. William Fogle.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by Appellant, to determine the specific section of KRS 18A which authorizes this appeal, to determine the relief sought by Appellant, to define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

The Hearing Officer notes this appeal was filed with the Personnel Board on December 1, 2014. The Appellant was appealing having been penalized by the issuance of a written reprimand, which, in view of Appellant, was essentially converted to a disciplinary action and was also void on its face. As relief, Appellant seeks removal of the written reprimand.

Counsel for the Appellee requested time in which file a dispositive motion. There was no objection. A briefing schedule was set.

Appellee filed a timely Motion to Dismiss to which Appellant filed a timely response. This matter is now submitted to the Hon. Boyce A. Crocker for a ruling on Appellee's Motion to Dismiss.

**BACKGROUND**

1. During the relevant times, Appellant, Dorsie L. Terrill, was a classified employee with status.

2. In its Motion to Dismiss, the Appellee concedes that Appellant was issued a written reprimand which made reference to 101 KAR 1:345. This regulation allows for disciplinary action to be taken against employees for lack of good behavior. Appellee cites the case of *Waller v. Finance and Administration Cabinet*, Kentucky Personnel Board Appeal No. 2007-175, 2008 WL 4329636 (KY PB). The Board had noted that citing that regulation may have created an appealable issue from a written reprimand which otherwise would not have been appealable.

3. Subsequent to the filing of the appeal and the pre-hearing conference having been held, the letter of written reprimand was reissued without reference being made to 101 KAR 1:345. Counsel contends that having removed that provision, the matter is no longer ripe for appeal. Counsel further cites KRS 18A.020(2)(c) for the proposition that Appellant may file a written response to a written reprimand to be included in the file, but otherwise the matter is not appealable.

4. Appellant filed a timely response. The gist of Appellant's response is that the Appellee cannot cure the defect by later removing the reference to 101 KAR 1:345 from the written reprimand. Counsel contends that the Franklin Circuit Court in its review of the *Waller* matter made it clear the Personnel Board did not have the authority to change the text of the written reprimand to remove references to a disciplinary action. Counsel goes on to state that, "Obviously, the Board had no authority to change the language of the purported written reprimand, nor does the appointing authority in this matter as already noted above."

5. KRS 18A.020(2)(c) states:

Whenever an employee is reprimanded for misconduct, other infraction, or failure to perform his duties in a proper or adequate manner, the supervising employee taking such action shall document such action in detail, and shall provide the employee with a copy of such documentation. The supervising employee shall inform the employee that he has the right to prepare a written response to the action taken after he has reviewed the written documentation prepared by the supervising employee. Such response shall be attached to the documentation prepared by the supervising employee. The supervising employee shall place a copy of the documentation and response provided for herein in the employee's personnel file and shall transmit a copy to the cabinet to be placed in the

official personnel file of the employee. The supervising employee shall notify the employee that copies of the documentation and the response provided for herein have been placed in his personnel files.

### **FINDINGS OF FACT**

1. During the relevant times, Appellant, Dorsie L. Terrill, was a classified employee with status.
2. The Hearing Officer finds that the proper method for responding to a written reprimand would be to file a written response to be included alongside the reprimand in the personnel file [KRS 18A.020(2)(c)].
3. Another remedy is to follow the steps outlined in 101 KAR 1:335, Section 6, for removal of written reprimands.
4. The Hearing Officer finds that in this case the written reprimand appears to have been issued lawfully and with the Agency having removed the reference to 101 KAR 1:345, there is no legitimate argument or appealable issue that remains.
5. The Hearing Officer finds Appellant's argument that an Agency cannot revise a letter of written reprimand because of the Franklin Circuit Court's decision in the *Waller* matter is flawed. To the extent that reprimands are allowed by KRS 18A, the Court of Appeals has found that written reprimands are not a penalization and are not appealable to the Personnel Board, clearly this is a matter between the employee and the agency. Here, the Appellant complained of the action taken in the written reprimand and because of that complaint the offensive language was removed.
6. The Hearing Officer finds Appellant's argument that because language that referenced the Personnel Board's disciplinary regulation was included in the original letter of reprimand means that the letter of written reprimand must be stricken from his record, is without merit.
7. Finally, the Hearing Officer would note that Appellant had originally been issued an intent to dismiss, which the Appointing Authority had rescinded subsequent to a pre-termination hearing. The Hearing Officer finds that Appellant's argument that rescission of the intent to dismiss means that there were no violations whatsoever or that the Agency can later take no disciplinary or corrective action to be wholly without merit.

**CONCLUSIONS OF LAW**

1. The Hearing Officer concludes as a matter of law that whatever defect may have been in the original letter of reprimand was corrected by Appellee, and having found the other arguments raised by Appellant to be without merit, the Hearing Officer concludes that pursuant to KRS 18A.095, this matter should be dismissed.

2. The Appellant alleges that he originally received a written reprimand which referenced 101 KAR 1:345 which makes it a disciplinary action and a penalization pursuant to KRS 18A.005(24). The Appellee corrected this issue by reissuing the written reprimand without a reference to 101 KAR 1:345. The Appellant does not cite to any authority that Appellee cannot resolve this issue by reissuing the reprimand without the offending language.

3. In *Waller v. Finance Cabinet*, the Franklin Circuit Court stated the Personnel Board could not correct this issue by ordering the agency to reissue a written reprimand without 101 KAR 1:345. The Court did not say the Agency could not correct this reference on its own.

4. The fact that this matter started as an intent to dismiss does not prevent the Agency from issuing a written reprimand [KRS 18A.095(1) – (6)].

5. There are no issues of material fact and this appeal can be decided as a matter of law based on the Appeal Form, Appellee's Motion to Dismiss and Appellant's response. [KRS 13B.090(2)].

**RECOMMENDED ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **DORSIE L. TERRILL VS. TRANSPORTATION CABINET (APPEAL NO. 2014-314)** be **DISMISSED**.

**NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

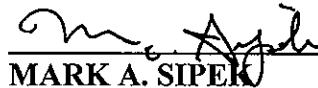
**Any document filed with the Personnel Board shall also be served on the opposing party.**

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each Party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

**ISSUED** at the direction of **Hearing Officer Boyce A. Crocker** this 2<sup>ND</sup> day of April, 2015.

**KENTUCKY PERSONNEL BOARD**



**MARK A. SIPER**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. William Fogle  
Hon. Paul Fauri  
Kathy Marshall